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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 WAYNE A. TAYLOR,) Case No. CV 13-06981 DDP (PJWx)
12)
13 Plaintiff,)
14) **ORDER STRIKING FIRST AMENDED**
15 v.) **COMPLAINT AND ORDERING PLAINTIFF**
16) **TO SHOW CAUSE WHY THIS CASE**
17 WILLIAM ROBINSON, JR.;) **SHOULD NOT BE DISMISSED**
18 EVERLAST SPARRING PARTNER;)
19 CENTURY MARTIAL ARTS; TKO,)
20 INC. SPARING PARTNER,)
21)
22 Defendants.)
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24)
25)
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28)

19 It appears to the court that Plaintiff's First Amended
20 Complaint (Dkt. No. 44) was erroneously filed by the Clerk of the
21 Court. Plaintiff filed his original Complaint on September 20,
22 2013. Certain Defendants filed a Motion to Dismiss and certificate
23 of service on October 17, 2013, which the court granted on November
24 5, 2013.

25 Plaintiff filed his First Amended Complaint on January 16,
26 2014. Under Federal Rule of Civil Procedure 15(a)(1), however, the
27 time in which Plaintiff could have amended his complaint as a
28 matter of course had already passed.

1 Where, as here, more than 21 days have passed after service of
2 a motion to dismiss under Rule 12(b), Federal Rule of Civil
3 Procedure 15(a)(2) controls. Under Rule 15(a)(2), Plaintiff could
4 only have filed his First Amended Complaint with Defendants'
5 written consent or leave of the court. Plaintiff did not obtain
6 Defendants' consent, nor did he seek leave to amend prior to filing
7 the First Amended Complaint. Because the First Amended Complaint
8 was not timely filed under Rule 15, it must be stricken.

9 Plaintiff's original Complaint states causes of action for
10 patent and trademark infringement. Under Federal Rule of Civil
11 Procedure 8, a complaint must contain "a short and plain statement
12 of the claim showing that the pleader is entitled to relief." Fed.
13 R. Civ. P. 8(a)(2). Naked assertions, conclusions, or mere
14 recitations of the elements of a cause of action are not
15 sufficient. See Ashcroft v. Iqbal, 556 U.S. 662, 677-678 (2009).

16 The court is not persuaded that Plaintiff's original Complaint
17 meets these requirements. While the Complaint makes reference to
18 certain attached exhibits, no exhibits appear to be attached. Nor
19 does the Complaint identify the patent that Plaintiff allegedly
20 owns and that Defendants have infringed. Accordingly, the court
21 orders Plaintiff to file a brief showing why this action should not
22 be dismissed. Plaintiff's brief must identify the particular
23 patents and trademarks at issue and explain Plaintiff's claim to
24 ownership of any such patents or trademarks. Plaintiff's brief
25 shall be filed withing 14 days of the date of this Order, and shall
26 not to exceed ten pages, not including attached exhibits, such as
27 patent or trademark registrations. Defendant should also deliver a
28 courtesy copy to chambers, Room 244-J, Second Floor, 312 N. Spring

1 Street, Los Angeles. The court will regard any failure to file an
2 explanatory brief as consent to dismissal of this matter.

3 All pending motions are VACATED and all proceedings stayed
4 pending Plaintiff's explanatory filing and until further order of
5 this court.

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8 IT IS SO ORDERED.

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11 Dated: February 12, 2015


DEAN D. PREGERSON
United States District Judge